Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT INVOLVING MJARDIN GROUP, INC., GROWFORCE HOLDINGS INC., 8586985 CANADA CORPORATION AND HIGHGRADE MMJ CORPORATION

B E T W E E N:

PRICEWATERHOUSECOOPERS INC., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF BRIDGING FINANCE INC. AND CERTAIN RELATED ENTITIES AND INVESTMENT FUNDS

Applicant

- and -

MJARDIN GROUP, INC., GROWFORCE HOLDINGS INC., 8586985 CANADA CORPORATION AND HIGHGRADE MMJ CORPORATION

Respondents

FACTUM OF THE APPLICANT
(Application Returnable June 2, 2022)

June 1, 2022

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PART I - OVERVIEW

1. PricewaterhouseCoopers Inc. ("**PwC**"), solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. ("**BFI**") and certain related entities and investment funds (in such capacity, the "**Bridging Receiver**"), brings this creditor-driven application for an initial order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") in respect of MJardin Group, Inc. ("**MJar**", and together with its direct and indirect subsidiaries, the "**MJar Group**"), Growforce Holdings Inc. ("**Growforce**"), 8586985 Canada Corporation ("**858**") and Highgrade MMJ Corporation ("**Highgrade**" and, together with MJar, Growforce and 858, the "**Respondents**"). All capitalized terms not expressly defined herein are defined in the Affidavit of Graham Page sworn June 1, 2022 (the "**Page Affidavit**").

2. By orders of the Court dated April 30, 2021, May 3, 2021, and May 14, 2021, PwC was appointed as the Bridging Receiver pursuant to section 129 of the *Securities Act* (Ontario) to protect the interests of, and maximize value for, Bridging's investors and other stakeholders. Bridging's investors are facing significant losses on their investments in Bridging's investment funds as a result of allegations of fraud, mismanagement, self-dealing, and poor lending practices that occurred at the BFI management level prior to the appointment of the Bridging Receiver.

3. One group of loans within Bridging's portfolio are those made by Bridging to certain entities in the MJar Group and in in respect of which each of the Respondents is either a borrower or guarantor. The Respondents are in the cannabis cultivation and cannabis management services business, and their business represents the core remaining business

of the MJar Group. The Respondents and other entities in the MJar Group are indebted to Bridging in the amount of approximately $178 million under the Loans.

4. The Respondents are in default of their obligations to Bridging under the Loan Agreements and related documentation and the Loans are past maturity. On March 23, 2022, the Bridging Receiver sought and obtained the Receivership Order appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager of the assets, property and undertaking of MJar, excluding the Excluded Assets and the Excluded Business (in such capacity, the "**MJar Receiver**").[1]

5. Bridging is the key economic stakeholder of the MJar Group. The principal mandate of the MJar Receiver was to review and consider available options to monetize and maximize the value of the MJar Group. Following that review, the Bridging Receiver, in consultation with the MJar Receiver, determined the best path for the MJar Group would be to develop and implement an operational restructuring of the Respondents' business and, ultimately, implement a restructuring transaction that will preserve and maximize value for the benefit of Bridging and other stakeholders of the Respondents. The Bridging Receiver and the MJar Receiver are of the view that the CCAA provides the most appropriate forum (particularly in light of the highly regulated nature of the cannabis industry) to achieve such a result. The Bridging Receiver therefore brings this creditor application for the Initial Order in respect of the Respondents. The Initial Order contemplates the appointment of KSV as the monitor of the Respondents (in such capacity, the "**Proposed Monitor**").

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[1] The Bridging Receiver only sought the appointment of KSV over MJar (and not the other Respondents) in order to avoid jeopardizing the cannabis licenses held by Highgrade and 858; however, the Receivership Order authorized the MJar Receiver to, among other things, access information in respect of the entire MJar Group and explore all opportunities for the restructuring and financing of the MJar Group as a whole.

6. At the Comeback Hearing, the Bridging Receiver will seek the appointment of Howards Capital Corp. ("**HCC**"), an experienced cannabis turn-around professional, to act as chief restructuring officer of the Respondents (in such capacity, the "**CRO**"). It is proposed that the CRO will lead the restructuring efforts on behalf of the Respondents under the supervision of the Proposed Monitor and the Court.

7. The Bridging Receiver has agreed to provide the Respondents with interim financing to fund the Respondents' operations and restructuring costs during the CCAA proceeding.

8. The Bridging Receiver submits that it has standing to bring this application, and that the commencement of these proceedings is a proper exercise of the rights of the Bridging Receiver on behalf of Bridging as senior secured creditor. Each of the Respondents is a debtor company to which the CCAA applies. The Respondents are clearly insolvent and have liabilities in excess of $5 million. The relief sought pursuant to the proposed Initial Order is reasonably necessary in the circumstances and satisfies the required legal tests.

PART II - THE FACTS

9. The facts relevant to the relief sought by the Bridging Receiver are set out in the Page Affidavit and are summarized below.

A. THE RESPONDENTS

10. The Respondents, who are described as follows, are in the cannabis cultivation and cannabis management services business and primarily operate in Canada.

    (a) **MJar:** MJar is a corporation incorporated under the laws of the Province of Ontario. MJar is the parent company of the MJar Group and is the direct parent

company of Growforce. Prior to the granting of the Receivership Order, MJar's common shares traded on the Canadian Securities Exchange under the ticker symbol "MJAR". MJar is a guarantor of the Loans. The MJar Receiver was appointed as receiver and manager over MJar on March 23, 2022;[2]

(b) **Growforce**: Growforce is a corporation incorporated under the laws of the Province of Ontario. Growforce is the borrower under the Canadian Loan Agreement and is a guarantor of the U.S. Loans. Growforce is wholly owned by MJar and is the direct parent company of Highgrade and 858;[3] and

(c) **Highgrade and 858**: Each of Highgrade and 858 are corporations incorporated under the laws of Canada. Highgrade and 858 are the two principal operating entities in the MJar Group and each hold cannabis licenses under the Cannabis Act. Highgrade operates out of the Dunnville Facility and 858 operates out of the Brampton Facility. Each of Highgrade and 858 is a guarantor of the Loans.[4]

11. The Respondents employ approximately 75 employees, who are primarily located in Ontario. According to its most recent Financial Statements, the Respondents are stated to have total assets with a book value of $85.9 million and total liabilities of $208.2 million.[5]

B. THE LOAN AGREEMENTS & DEBT OBLIGATIONS

12. The following provides an overview of the material debt obligations of the Respondents:

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[2] Affidavit of Graham Page sworn June 1, 2022 (the "**Page Affidavit**") at para 10(a).

[3] Page Affidavit at para 10(b).

[4] Page Affidavit at para 10(c).

[5] Page Affidavit at paras 33 & 35.

(a) **Canadian Loan**: Pursuant to the Canadian Loan Agreement among Growforce, as borrower, BFI, as agent, the Bridging investment funds from time to time acting as lenders (the "**Lenders**"), and each of MJar, Highgrade, and 858 as obligors, the Lenders made available to Growforce a revolving demand loan (the "**Canadian Loan**"). The total amount outstanding under the Canadian Loan Agreement is approximately $135 million. The obligations of the Respondents under the Canadian Loan Agreement are secured by a security interest over substantially all of their present and after-acquired property pursuant to separate general security agreements (the "**Security**");[6]

(b) **U.S. Loans**: Pursuant to the U.S. Loan Agreement, the Lenders made available to the U.S. Borrowers certain demand loans (the "**U.S. Loans**" and together with the Canadian Loan, the "**Loans**"). The U.S. Borrowers are indirect subsidiaries of MJar and no relief is being sought in respect of the U.S. Borrowers at this time. The total amount outstanding under the U.S. Loan Agreement is approximately $44 million. The Respondents cross-guaranteed the U.S. Loans. Each of the Respondents' obligations under its cross-guarantee of the U.S. Loans is also secured by the Security;[7]

(c) **MJar Receiver's Borrowings**: After the granting of the Receivership Order in respect of MJar, the Bridging Receiver, on behalf of the Lenders, advanced

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[6] Page Affidavit at paras 19-20.

[7] Page Affidavit at paras 21-23.

approximately $2.54 million to the MJar Receiver as MJar Receiver's Borrowings to fund operations and other expenses;[8] and

(d) **Excise Tax & HST Owing**: In addition to the foregoing, the Bridging Receiver understands that the Respondents have arrears on excise taxes and HST, which, as at March 22, 2022, totaled approximately $650,615 and $325,920, respectively.[9]

C. EVENTS LEADING UP TO CCAA APPLICATION & OBJECTIVE OF FILING

13. The MJar Group has not been profitable since MJar was publicly listed in 2018 and has relied almost entirely on financing from the Lenders to fund ongoing operations. As a result of poor financial performance, as at April 21, 2021, the MJar Group was in default (or was expected to be in default forthwith) of its obligations under the Loan Agreements.[10]

14. In order to provide the MJar Group with an opportunity to pursue strategic sale and/or restructuring alternatives, the Agent and the Lenders agreed to temporarily waive certain provisions of the Loan Agreements until May 1, 2022. After the appointment of the Bridging Receiver, the waiver of such provisions was extended by two separate agreements (the "**Temporary Waiver Agreements**"). The purpose of the Temporary Waiver Agreements was to allow the MJar Group to advance restructuring efforts led by the Previous CRO with the support of the Bridging Receiver.[11]

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[8] Page Affidavit at paras 25-26.

[9] Page Affidavit at para 32.

[10] Page Affidavit at paras 39-40.

[11] Page Affidavit at para 40.

15. As described in the Page Affidavit, MJar's restructuring efforts were largely unsuccessful and the relationship between the Bridging Receiver and the Previous CRO began to break down. In light of the foregoing, and the accrual of significant amounts of HST and excise tax arrears, the Bridging Receiver came to the view that the *status quo* put the interests of the Lenders at risk, and sought the appointment of the MJar Receiver.[12]

16. Following the issuance of the Receivership Order, the MJar Receiver and the Bridging Receiver reviewed and assessed the business and financial situation of the MJar Group and considered various options and alternatives to maximize value. Based on this review, the Bridging Receiver, in consultation with the MJar Receiver, determined that the best available option to maximize the value of the Respondents' business and assets is to pursue certain operational restructuring initiatives under the CCAA.[13]

17. The key features of the operational restructuring are expected to include: (i) a change of focus of the Respondents' business from supplying cannabis to the consumer market to supplying cannabis to the wholesale market; and (ii) a review of the Respondents' contractual obligations and other ongoing liabilities to rationalize their cost base.[14]

18. To this end, the Bridging Receiver and the MJar Receiver have negotiated an agreement with HCC for HCC to serve as CRO of the Respondents in these proceedings, subject to Court approval. The appointment of the CRO will be sought at the Comeback Hearing.[15]

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[12] Page Affidavit at para 43.
[13] Page Affidavit at paras 46-48.
[14] Page Affidavit at para 48.
[15] Page Affidavit at para 48.

19. The MJar Receiver supports the filing of this application and also consents to its appointment as Monitor. An order discharging the MJar Receiver will be sought following the granting of the Initial Order.[16]

PART III - THE ISSUES

20. The sole issue on this application is whether the relief sought pursuant to the proposed Initial Order should be granted.

PART IV - LAW & ANALYSIS

A. STANDING OF THE APPLICANT AS A SECURED CREDITOR

21. It is well established that creditors may bring an application for an initial order under the CCAA in respect of a debtor company. As noted by Justice Fitzpatrick in *Miniso International Hong Kong Limited v. Migu Investments Inc.*:

> [t]he CCAA expressly grants standing to creditors to commence proceedings in respect of a debtor company … [t]he commencement of CCAA proceedings is a proper exercise of creditors' rights where, ideally, the CCAA will preserve the going-concern value of the business and allow it to continue for the benefit of the "whole economic community", including the many stakeholders here. This is intended to allow stakeholders to avoid losses that would be suffered in an enforcement and liquidation scenario.[17]

22. A restructuring under the CCAA may take many forms. The CCAA is designed to be a flexible instrument and courts have often recognized and developed creative ways in which

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[16] Page Affidavit at para 49.

[17] *Miniso International Hong Kong Limited v. Migu Investments Inc.*, 2019 BCSC 1234 [***Miniso***] at paras 45 & 47.

to ensure that the broader remedial objectives of the CCAA are met,[18] including, where appropriate, through creditor-driven processes.[19]

23. The Lenders are the senior secured creditors of the Respondents and are the primary (and perhaps only) stakeholder with an economic interest in the Respondents. The Bridging Receiver brings this application on behalf of the Lenders for two principal reasons. First, to minimize the losses that Bridging (and by extension, its investors and other stakeholders) will suffer as a result of the Loans. Second, to allow the Respondents, under the direction of HCC, to pursue an operational restructuring in order to preserve and maximize the value of their business and avoid an immediate liquidation, which appears to be the only other alternative at this stage.

24. The Bridging Receiver submits that CCAA protection will provide an opportunity to benefit the "whole economic community" by preserving jobs for employees and going concern value for the benefit of stakeholders, including the Lenders and the suppliers and the other parties with whom the Respondents transact.

25. Accordingly, the Bridging Receiver submits that it has standing and is an appropriate party to bring forth this creditor application for the Initial Order.

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[18] *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 19; *Re Canadian Red Cross Society* (1998), 5 C.B.R. (4th) 299 at para 45.

[19] See for example: *Miniso*, *supra* note 17; *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 CanLII 21724 (ONSC).

B. THE APPLICATION COMPLIES WITH ALL CCAA REQUIREMENTS

26. In order to qualify for CCAA protection, each of the Respondents must be a "debtor company" whose liabilities exceed $5 million. A "debtor company" is defined under section 2(1) of the CCAA to include a "company" that is "insolvent" or that has committed an act of bankruptcy within the meaning of the BIA.[20]

27. Each of the Respondents is a corporation incorporated under the laws of Ontario or Canada and therefore constitutes a "company". The Respondents are clearly insolvent and have liabilities far exceeding the $5 million threshold. Accordingly, each of the Respondents is a "debtor company" to which the CCAA applies.

C. THE STAY OF PROCEEDINGS IS APPROPRIATE

28. The proposed Initial Order provides for the granting of a stay of proceedings up to and including the Comeback Hearing.

29. Pursuant to section 11.02 of the CCAA, a Court may make an order staying all proceedings in respect of a debtor company for a period of ten (10) days, provided that the Court is satisfied that circumstances exist that make the order appropriate.[21]

30. The stay of proceedings sought in respect of the Respondents is necessary to maintain the *status quo* and to preserve the value of the Respondents' business as a going concern during the course of the proposed restructuring. The Bridging Receiver submits that the stay of proceedings should be granted.

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[20] *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 [***CCAA***], s. 2(1).

[21] *CCAA*, s. 11.02.

D. THE PROPOSED MONITOR SHOULD BE APPOINTED

31. As described above, the Bridging Receiver seeks the appointment of KSV as the Monitor.

32. Upon the granting of an Initial Order, section 11.7 of the CCAA requires that a trustee be appointed to monitor the debtor company's business and financial affairs.[22]

33. KSV has consented to act as monitor in these CCAA proceedings, subject to the granting of the Initial Order, and is a trustee within the meaning of subsection 2(1) of the BIA. Further, KSV is not subject to any of the restrictions as to who may be appointed as monitor set out in section 11.7(2) of the CCAA. Notably, the Receivership Order provides that KSV is authorized and empowered to act as court-appointed monitor of MJar and any of its subsidiaries in any CCAA proceeding.[23]

34. Accordingly, KSV should be appointed as Monitor of the Respondents in these proceedings.

E. THE ADMINISTRATION CHARGE SHOULD BE APPROVED

35. The Bridging Receiver requests that this Court grant a super-priority administration charge on the Property in favour of the Monitor and the Proposed Monitor's independent legal counsel in the amount of $100,000 (the "**Administration Charge**"). At the Comeback Hearing, the Bridging Receiver will seek to increase the amount of the Administration Charge to $300,000. The Bridging Receiver will also request that the CRO be provided

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[22] *CCAA*, s. 11.7.

[23] Page Affidavit at paras 49 & 68.

the benefit of the Administration Charge (up to a maximum of $160,000 and not in respect of the obligation of the Respondents to pay any Additional Consideration).

36. Section 11.52 of the CCAA provides the Court with express statutory jurisdiction to grant the Administration Charge.[24] The only creditors who are likely to be impacted by the Administration Charge are the Lenders. The Bridging Receiver, on behalf of the Lenders, is of the view that the priority and quantum of the Administration Charge are reasonable and appropriate in the circumstances.

F. THE DIP TERM SHEET & DIP LENDER'S CHARGE SHOULD BE APPROVED

37. Section 11.2(1) of the CCAA provides the Court with the express statutory authority to approve the DIP Term Sheet and the DIP Lender's Charge. Section 11.2(2) further provides the Court with the express statutory authority to order that the DIP Lender's Charge rank in priority to the claim of any secured creditor of the debtor company.[25]

38. As described in the Page Affidavit, the Bridging Receiver, on behalf of BFI or an affiliate to be named (the "**DIP Lender**"), has agreed to provide interim financing up to a maximum principal amount of $2 million (the "**DIP Financing**") to fund the Respondents' operations and expenses during these proceedings. The Bridging Receiver requests that this Court grant a super-priority charge on the Property in favour of the DIP Lender in the amount of $250,000 (the "**DIP Lender's Charge**"). This amount is limited to the borrowings that are required to ensure the Respondents can continue operating their business through the

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[24] *CCAA*, s. 11.52.

[25] *CCAA*, ss. 11.2(1), 11.2(2) & 11.001.

initial stay period, and the DIP Lender's Charge (and the other changes sought to be granted under the Initial Order) will initially not prime any secured creditor of the Respondents who does not receive notice of the application for the Initial Order.

39. At the Comeback Hearing, the Bridging Receiver will seek to increase the amount of the DIP Financing and the DIP Lender's Charge to $2 million. Section 11.2(4) sets out the following factors to be considered by the Court in deciding whether to grant a DIP charge: (i) the period during which the company is expected to be subject to proceedings under this Act; (ii) how the company's business and financial affairs are to be managed during the proceedings; (iii) whether the company's management has the confidence of its major creditors; (iv) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company; (v) the nature and value of the company's property; (vi) whether any creditor would be materially prejudiced as a result of the security or charge; and (vii) the monitor's report.[26]

40. Based on the following factors, the DIP Term Sheet and the DIP Lender's Charge should be approved:

    (a) the Respondents have urgent liquidity needs and, given their current financial circumstances, the Respondents cannot obtain alternative financing outside of these CCAA proceedings. Without the DIP Financing, the Respondents would be unable to continue in business and make payroll in the near term;

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[26] *CCAA*, s. 11.2(4).

(b) the quantum of the DIP Financing is reasonable and appropriate having regard to the Cash Flow Forecast;

(c) The DIP Term Sheet contains market terms having regarding to interim financing arrangements that have been approved in other CCAA proceedings;

(d) the Proposed Monitor is of the view that the DIP Term Sheet and DIP Lender's Charge are appropriate and limited to what is reasonably necessary in the circumstances;[27] and

(e) the only creditors who are likely to be impacted by the DIP Lender's Charge are the Lenders, who are providing the DIP Financing.

G. THE DIRECTORS' CHARGE SHOULD BE APPROVED

41. To ensure the ongoing stability of the Respondents' business during the CCAA proceedings, the Respondents' will require the continued participation of their current director and officers (and any future directors and officers) as they seek to pursue their operational and other restructuring initiatives. This is especially important in the regulated cannabis space, as such directors and officers often have the security clearance required by Health Canada.

42. The Bridging Receiver therefore requests that this Court grant a super-priority charge in favour of the Respondents' directors and officers in the initial amount of $355,000 over the Property (the "**Director's Charge**") to secure the indemnity provided to the Respondents' directors and officers in respect of any liabilities they may incur during the

[27] KSV Report at Sections 8.2 – 8.4 and 8.5.3.

CCAA proceedings. At the Comeback Hearing, the Bridging Receiver will seek to increase the amount of the Directors' Charge to $785,000.

43. Section 11.51 of the CCAA provides the Court with the express statutory jurisdiction to grant the Directors' Charge in an amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.[28] For the initial Director's Charge, the requested amount must be limited to only what is reasonably necessary through the initial stay period.[29]

44. In *Jaguar Mining Inc., Re*, Morawetz J. (as he then was) stated that, in order to grant a Directors' Charge, the Court must be satisfied of the following factors: (i) notice has been given to the secured creditors likely to be affected by the charge; (ii) the amount is appropriate; (iii) the applicant could not obtain adequate indemnification insurance for the director at a reasonable cost; and (iv) the charge does not apply in respect of any obligation incurred by a director as a result of the director's gross negligence or wilful misconduct.[30]

45. The Bridging Receiver submits that the foregoing factors are satisfied in the circumstances for the following reasons: (i) the Respondents will benefit from the active and committed involvement of the current and future directors and officers, whose continued participation will help facilitate an effective restructuring; (ii) the directors and officers cannot be certain whether the existing insurance will be applicable or respond to any claims made, including because the insurance premium thereunder has been financed, and the policy could be

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[28] CCAA, section 11.51.

[29] CCAA, s. 11.001.

[30] *Jaguar Mining Inc., Re*, 2014 ONSC 494 at para 45.

subject to termination or exercise of other remedies if payments are not made as and when required under the related financing agreement; (iii) the Directors' Charge does not secure obligations incurred by a director as a result of the directors' gross negligence or wilful misconduct; and (iv) the Proposed Monitor is of the view that the Directors' Charge is reasonable and appropriate in the circumstances.[31]

46. The only creditors who are likely to be impacted by the Directors' Charge are the Lenders, who consent to, and seek approval of, the Directors' Charge. As such, the Bridging Receiver submits that the Directors' Charge should be granted.

H. THE SEALING ORDER SHOULD BE GRANTED

47. The proposed Initial Order provides that the Confidential Appendices to the KSV Report (consisting of an unredacted copy of the CRO Engagement Letter and the Business Assessment Report, as defined in the KSV Report) shall be sealed and not form part of the public record until further Order of the Court.

48. Pursuant to section 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, the Court has the jurisdiction and the discretion to order that any document filed in a civil proceeding be treated as "confidential, sealed and not form part of the public record".

49. In *Sierra Club of Canada v. Canada (Minister of Finance)*, Justice Iacobucci held that a sealing order should only be granted when:

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[31] Page Affidavit at paras 73 – 76; KSV Report at section 8.5.2.

(a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and

(b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.[32]

50. The *Sierra Club* test was recently restated by the Supreme Court of Canada in *Sherman Estate v. Donovan*, where Justice Kasirer wrote that:

> Court proceedings are presumptively open to the public. The test for discretionary limits on presumptive court openness has been expressed [in *Sierra Club*] as a two-step inquiry involving the necessity and proportionality of the proposed order. Upon examination, however, this test rests upon three core prerequisites that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle.[33]

51. In recasting the *Sierra Club* test, the Supreme Court held that the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:[34]

(a) court openness poses a serious risk to an important public interest;

(b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

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[32] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para 53.

[33] *Sherman Estate v Donovan*, 2021 SCC 25 at paras 37-38.

[34] *Ibid*.

(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

52. Only where all three of these prerequisites have been met can a sealing order be granted. In particular, the Supreme Court emphasized that the important interest the sealing order seeks to protect must have a "public character" that transcends the interests of the immediate parties to the dispute.[35]

53. The Bridging Receiver respectfully submits that the foregoing test has been satisfied in the circumstances. The unredacted CRO Engagement Letter contains two items that the Bridging Receiver seeks to keep confidential and not form part of the public record: (i) the breakdown of monthly costs and expenses attributable to the CRO and each individual Consultant (collectively, the "**Monthly CRO Fees**"); and (ii) the "hurdle rate" for the Additional Consideration, above which the CRO receives 15% of the Net Proceeds in excess of such amount (the "**Hurdle Rate**").

54. With respect to the Monthly CRO Fees, it is notable that the aggregate estimated amount of such fees is disclosed in the Page Affidavit and is estimated to be approximately $150,000 per month. As such, stakeholders and interested parties have full disclosure regarding the aggregate estimated impact of the Monthly CRO Fees on the estate. However, the Bridging Receiver submits that the amount of the Monthly CRO Fees attributable to the CRO and each individual Consultant should remain confidential.

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[35] *Ibid*.

55. The Bridging Receiver submits that the CRO and each individual Consultant has a reasonable expectation that their personal and financial information will be kept confidential. Courts have previously granted sealing orders in respect of the terms of a chief restructuring officer's engagement, recognizing that such terms are commercially sensitive information, and if disclosed, could impair the chief restructuring officer's ability to obtain market rates in future engagements.[36]

56. The Hurdle Rate represents the Bridging Receiver's estimated liquidation value of the Respondents' assets. Disclosing the Hurdle Rate at this stage would negatively impact future realizations and potentially set a "ceiling" in any future sales process, to the detriment of stakeholders. Courts have recognized that there is a public interest in maximizing recoveries in a restructuring proceeding, which transcends each individual case.[37]

57. As for the Business Assessment Report, this document contains confidential and sensitive commercial information regarding the business and operations of the Debtors, as well as their expected operational restructuring initiatives. The disclosure of this information would likely negatively impact the Debtors' restructuring efforts.

58. The Bridging Receiver submits that the proposed sealing order seeks to protect the important public interests of privacy, protection of commercially sensitive information, and maximizing recoveries in a restructuring proceeding, each of which goes beyond the

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[36] *JTI-Macdonald Corp., Re*, 2019 ONSC 1625 at para 29; *Victorian Order of Nurses for Canada (Re)*, 2015 ONSC 7371 at para 28.

[37] *Danier Leather Inc., Re*, 2016 ONSC 1044 at para 84.

interests of the parties to this proceeding. There are no satisfactory alternatives to the sealing order in the circumstances. Further, no stakeholders will be materially prejudiced by sealing the unredacted CRO Engagement Letter and the Business Assessment Report, and the salutary effects of granting the sealing order outweigh any deleterious effects.

59. Accordingly, the Bridging Receiver submits that the *Sierra Club* test, as restated by the Supreme Court in *Sherman Estate*, has been satisfied and therefore the sealing order should be granted. The proposed Monitor supports the proposed sealing of the Confidential Appendices.[38]

I. THE RELIEF SOUGHT IS REASONABLY NECESSARY

60. Pursuant to s. 11.001 of the CCAA, the relief sought on an initial application is to be limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during the initial stay period.

61. The stated purpose of s. 11.001 is to "limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players."[39]

62. The Bridging Receiver, in consultation with the Proposed Monitor, has limited the relief sought on this initial application to only the relief that is reasonably necessary in the circumstances for the continued operation of the Respondents' business during the initial

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[38] KSV Report at Sections 1.1(h)i. and 4.1 6. & 7.

[39] *Lydian International Limited (Re)*, 2019 ONSC 7473 at para 25.

stay period. As described herein and in the Page Affidavit, the Bridging Receiver intends to return to this Court on the Comeback Hearing to request further relief.

63. The Bridging Receiver submits that the relief sought on this initial application is consistent with s. 11.001 of the CCAA and should therefore be granted.

PART V - RELIEF REQUESTED

64. For all of the foregoing reasons, the Bridging Receiver requests that this Honourable Court grant the Initial Order substantially in the form of the draft Initial Order located at Tab 3 of the Bridging Receiver's Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of June, 2022

June 1, 2022

Thornton Grout Finnigan LLP
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SCHEDULE "A"
LIST OF AUTHORITIES

No.	**Case Law**
1	*Miniso International Hong Kong Limited v. Migu Investments Inc.*, 2019 BCSC 1234
2	*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60
3	*Re Canadian Red Cross Society* (1998), 5 C.B.R. (4th) 299
4	*ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp., 2008 CanLII 21724*
5	*Jaguar Mining Inc., Re,* 2014 ONSC 494
6	*Sierra Club of Canada v. Canada (Minister of Finance),* 2002 SCC 41
7	*Sherman Estate v Donovan,* 2021 SCC 25
8	*JTI-Macdonald Corp., Re,* 2019 ONSC 1625
9	*Victorian Order of Nurses for Canada (Re),* 2015 ONSC 7371
10	*Danier Leather Inc., Re,* 2016 ONSC 1044
11	*Lydian International Limited (Re),* 2019 ONSC 7473

SCHEDULE "B"
RELEVANT STATUTES

***Companies' Creditors Arrangement Act*, RSC 1985, c C-36**

Section 2

Definitions
debtor company means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent.

Section 3

Application
(1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than $5,000,000 or any other amount that is prescribed.

Section 11

General power of court
Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Section 11.001

Relief reasonably necessary
An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Section 11.02

Stays, etc. – initial application

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

> (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
>
> (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
>
> (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application
(3) The court shall not make the order unless

> (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
> (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction
(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Section 11.2

Interim financing
(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors
(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders
(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered
(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application
(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Section 11.51

Security or charge relating to director's indemnification
(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority
(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction — indemnification insurance
(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault
(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

Section 11.52

Court may order security or charge to cover certain costs
(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

> (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
>
> (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
> (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act. Priority (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

<u>Courts of Justice Act</u>

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT INVOLVING MJARDIN GROUP, INC., GROWFORCE HOLDINGS INC., 8586985 CANADA CORPORATION AND HIGHGRADE MMJ CORPORATION

Court File No.:_____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

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